MONTANA LEGISLATIVE HISTORY

Chapter 320 19 95

Bill H 389 S _____ Original bill & history ✓ C

| H. Committee on Business & Labor | | | S. Committee on Business & Industry | | |
|---|---|---|---|---|---|
| Hearing Date(s) | Feb 02 | ✓ C | Hearing Date(s) | Mar 15 | ✓ C |
| | Feb 09 | ✓ C | | Mar 17 | ✓ C |
| | | C | | | C |
| | | C | | | C |
| Date Out | | C | | | |

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Did this bill originate in an interim committee? ____ Yes ____ No

Committee _____ Report _____

HB 387 INTRODUCED BY BOHARSKI, ET AL.

CLARIFY THAT AN INSURER MAY GIVE PREMIUM DISCOUNTS TO AN INSURED BASED UPON FAVORABLE ASPECTS OF THE INSURED'S CLAIMS HISTORY

| | | | |
|---|---|---|---|
| 1/31 | INTRODUCED | | |
| 1/31 | FIRST READING | | |
| 1/31 | REFERRED TO BUSINESS & LABOR | | |
| 2/07 | HEARING | | |
| 2/10 | COMMITTEE REPORT—BILL PASSED AS AMENDED | | |
| 2/11 | 2ND READING PASSED AS AMENDED | 95 | 1 |
| 2/14 | 3RD READING PASSED | 100 | 0 |
| | TRANSMITTED TO SENATE | | |
| 2/20 | FIRST READING | | |
| 2/20 | REFERRED TO BUSINESS & INDUSTRY | | |
| 3/15 | HEARING | | |
| 3/18 | COMMITTEE REPORT—BILL CONCURRED | | |
| 3/25 | 2ND READING CONCURRED | 48 | 0 |
| 3/27 | 3RD READING CONCURRED | 49 | 0 |
| | RETURNED TO HOUSE | | |
| 3/28 | SIGNED BY SPEAKER | | |
| 3/28 | SIGNED BY PRESIDENT | | |
| 3/29 | TRANSMITTED TO GOVERNOR | | |
| 4/03 | SIGNED BY GOVERNOR | | |
| | CHAPTER NUMBER 320 | | |
| | EFFECTIVE DATE: 10/01/95 | | |

HB 388 INTRODUCED BY REAM, ET AL.

INCLUDE SEXUAL ORIENTATION IN SOME OF PROTECTIONS CONTAINED IN THE HUMAN RIGHTS LAWS

| | |
|---|---|
| 1/31 | INTRODUCED |
| 1/31 | FIRST READING |
| 1/31 | REFERRED TO JUDICIARY |
| 2/01 | FISCAL NOTE REQUESTED |
| 2/07 | FISCAL NOTE RECEIVED |
| 2/07 | FISCAL NOTE PRINTED |
| 2/10 | HEARING |
| 2/11 | TABLED IN COMMITTEE |
| 2/23 | MISSED TRANSMITTAL DEADLINE |
| | DIED IN COMMITTEE |

HB 389 INTRODUCED BY LARSON, ET AL.

ALLOW ELECTED COUNTY ASSESSOR TO BE DESIGNATED AS AN AGENT OF DEPARTMENT OF REVENUE

| | | | |
|---|---|---|---|
| 1/31 | INTRODUCED | | |
| 1/31 | FIRST READING | | |
| 1/31 | REFERRED TO TAXATION | | |
| 2/01 | FISCAL NOTE REQUESTED | | |
| 2/07 | FISCAL NOTE RECEIVED | | |
| 2/08 | FISCAL NOTE PRINTED | | |
| 2/09 | HEARING | | |
| 2/13 | COMMITTEE REPORT—BILL PASSED AS AMENDED | | |
| 2/15 | 2ND READING PASSED | 62 | 36 |
| 2/16 | 3RD READING PASSED | 61 | 38 |
| | TRANSMITTED TO SENATE | | |
| 2/21 | FIRST READING | | |
| 2/21 | REFERRED TO TAXATION | | |
| 3/13 | HEARING | | |

HOUSE BILL NO. 387

INTRODUCED BY Wm E Boharski

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THAT AN INSURER MAY GIVE PREMIUM DISCOUNTS TO AN INSURED BASED UPON FAVORABLE ASPECTS OF THE INSURED'S DRIVING RECORD; AND AMENDING SECTIONS 33-16-201 AND 33-18-210, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 33-16-201, MCA, is amended to read:

"**33-16-201. Standards applicable to rates.** The following standards ~~shall~~ apply to the making and use of rates pertaining to all classes of insurance to which the provisions of this chapter are applicable:

(1) (a) Rates ~~shall~~ may not be excessive or inadequate, ~~as herein defined, nor shall~~ and they may not be unfairly discriminatory.

(b) ~~No~~ A rate ~~shall~~ may not be held to be excessive unless ~~such~~ the rate is unreasonably high for the insurance provided and a reasonable degree of competition does not exist in the area with respect to the classification to which ~~such~~ the rate is applicable.

(c) ~~No~~ A rate ~~shall~~ may not be held to be inadequate unless ~~such~~ the rate is unreasonably low for the insurance provided and the continued use of ~~such~~ the rate endangers the solvency of the insurer using the ~~same~~ rate or unless ~~such~~ the rate is unreasonably low for the insurance provided and the use of ~~such~~ the rate by the insurer ~~using same~~ has, or if continued will have, the effect of destroying competition or creating a monopoly.

(2)(a) Consideration ~~shall~~ must be given, ~~to the extent~~ when applicable, to past and prospective loss experience within and outside this state, to ~~revenues~~ revenue and profits from reserves, to conflagration and catastrophe hazards, if any, to a reasonable margin for underwriting profit and contingencies, to past and prospective expenses, both countrywide and those specially applicable to this state, and to all other factors, including judgment factors, ~~deemed~~ considered relevant within and outside this state. In the case of fire insurance rates, consideration may be given to the experience of the fire insurance business during the most recent 5-year period for which ~~such~~ experience is available.

(b) Consideration may also be given in the making and use of rates to dividends, savings, or

unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers.

(3) The systems of expense provisions included in the rates for use by any insurer or group of insurers may differ from those of other insurers or groups of insurers to reflect the operating methods of ~~any such~~ the insurer or group with respect to any kind of insurance or with respect to any subdivision or combination ~~thereof~~ of insurance.

(4) Risks may be grouped by classifications for the establishment of rates and minimum premiums. Classification rates may be modified to produce rates for individual risks in accordance with rating plans ~~which~~ that establish standards for measuring variations in hazards or expense provisions, or both. ~~Such~~ The standards may measure any difference among risks that have a probable effect upon losses or expenses. Classifications or modifications of classifications of risks may be established, based upon size, expense, management, individual experience, location or dispersion of hazard, or any other reasonable considerations~~,~~. ~~except that~~ Special risk classifications may be established based upon favorable aspects of an insured's driving record that is 3 years old or older. However, ~~no~~ a special risk classification may not be established based on anything adverse to the insured in a driving record ~~which~~ that is 3 years old or older. ~~Such classifications~~ Classifications and modifications ~~shall~~ apply to all risks under the same or substantially the same circumstances or conditions."

**Section 2.** Section 33-18-210, MCA, is amended to read:

"**33-18-210. Unfair discrimination and rebates prohibited -- property, casualty, and surety insurances.** (1) A title, property, casualty, or surety insurer or an employee, representative, or insurance producer of an insurer may not, as an inducement to purchase insurance or after insurance has been effected, pay, allow, or give or offer to pay, allow, or give, directly or indirectly, a:

(a) rebate, discount, abatement, credit, or reduction of the premium named in the insurance policy;

(b) special favor or advantage in the dividends or other benefits to accrue on the policy; or

(c) valuable consideration or inducement not specified in the policy, except to the extent provided for in an applicable filing with the commissioner as provided by law.

(2) An insured named in a policy or an employee of the insured may not knowingly receive or accept, directly or indirectly, a:

(a) rebate, discount, abatement, credit, or reduction of premium;

(b) special favor or advantage; or

(c) valuable consideration or inducement.

(3) An insurer may not make or permit unfair discrimination in the premium or rates charged for insurance, in the dividends or other benefits payable on insurance, or in any other of the terms and conditions of the insurance either between insureds or property having like insuring or risk characteristics or between insureds because of race, color, creed, religion, or national origin.

(4) This section may not be construed as prohibiting the payment of commissions or other compensation to duly licensed insurance producers or as prohibiting an insurer from allowing or returning lawful dividends, savings, or unabsorbed premium deposits to its participating policyholders, members, or subscribers.

(5) An insurer may not make or permit unfair discrimination between individuals or risks of the same class and of essentially the same hazards by refusing to issue, refusing to renew, canceling, or limiting the amount of insurance coverage on a property or casualty risk because of the geographic location of the risk, unless:

(a) the refusal, cancellation, or limitation is for a business purpose that is not a mere pretext for unfair discrimination; or

(b) the refusal, cancellation, or limitation is required by law or regulatory mandate.

(6) An insurer may not make or permit unfair discrimination between individuals or risks of the same class and of essentially the same hazards by refusing to issue, refusing to renew, canceling, or limiting the amount of insurance coverage on a residential property risk~~,~~ or on the personal property contained ~~therein,~~ in the residence because of the age of the residential property, unless:

(a) the refusal, cancellation, or limitation is for a business purpose that is not a mere pretext for unfair discrimination; or

(b) the refusal, cancellation, or limitation is required by law or regulatory mandate.

(7) An insurer may not refuse to insure, refuse to continue to insure, or limit the amount of coverage available to an individual because of the sex or marital status of the individual~~, but~~. However, an insurer may take marital status into account for the purpose of defining persons eligible for dependents' benefits.

(8) An insurer may not terminate or modify coverage or refuse to issue or refuse to renew a property or casualty policy or contract of insurance solely because the applicant or insured or any employee

of either is mentally or physically impaired~~;~~. ~~however~~ However, this subsection does not apply to accident and health insurance sold by a casualty insurer, and this subsection may not be interpreted to modify any other provision of law relating to the termination, modification, issuance, or renewal of any insurance policy or contract.

(9) An insurer may not refuse to insure, refuse to continue to insure, charge higher rates, or limit the amount of coverage available to an individual based solely on adverse information contained in a driving record that is 3 years old or older. However, an insurer may provide discounts to an insured based on favorable aspects of an insured's driving record that is 3 years old or older.

(10) An insurer may not charge points or surcharge a private passenger motor vehicle policy because of a claim submitted under the insured's policy if the insured was not at fault."

-END-

## HEARING ON HB 387

Opening Statement by Sponsor:

**REP. WILLIAM BOHARSKI, HD 79, Kalispell,** stated **HB 387** was in the title. For some 30 years in the State of Montana, insurance companies had been allowed to write "good driver discounts" into insurance policies. Previously, there had been questions he said, but insurance companies had always been permitted to do that. He maintained when they checked the driving records, they checked back a number of years. He said the policy in Montana and law stated they could only look back for a certain period of time. He reported that was not the public policy of the State of Montana. Some companies had many people receiving a good driver discount and what that meant was they could look back beyond that 3 year period of time and under the laws being interpreted by the Insurance Commissioner, that could not be done. He clarified that on page 4, they could write the good drivers' discount.

Proponents' Testimony:

**Greg Van Horssen, State Farm Insurance Companies of Montana,** stated State Farm did strongly support **HB 387**. He stated this bill clarified an insurers ability to provide discounts to its' insureds based upon the positive aspect of an insureds' driving history. By way of explanation, State Farm had offered an accident free discount in this state for many years, approaching 30 years.

**Mr. Van Horssen** said the method State Farm's program operated currently was if a driver had gone beyond 3 years with a good driving history, that driver was offered a 10% premium reduction. He said if they went beyond 6 years with a good driving history, that driver was offered a 15% premium reduction. He related this was a substantial discount enjoyed by nearly 80,000 State Farm insureds. He said during the interim, it was brought to State Farm's attention, that a certain portion of the insurance code could be construed to prohibit this type of good driver discount. He related that provision was in front of the committee today in the unamended portions of 33-16-201, in particular Page 2, lines 16 through 18, where it began with the word "no" that had been stricken, "a special risk classification may not be established based on anything adverse to the insured in a driving record that is 3 years old or older".

**Mr. Van Horssen** contended the explanation was they were using positive aspects and had been using positive aspects. He stated the fact that a driver had not made a claim for 3 or 6 years or beyond and the provisions of this bill, as amended, simply clarified what they had been doing in this state for 30 years. He declared it took away the gray area they had been wondering about for about a year and a half. He conveyed generally, accident-free discounts, at least with State Farm's operation,

were not based upon adverse information. He expressed they were instead based upon favorable claims histories. **HB 387** simply clarified that, so on behalf of State Farm policy holders in Montana, he asked the committee for a do concur recommendation on **HB 387.**

**Jacqueline Lenmark, American Insurance Association (AIA)**, stated they strongly supported **HB 387**. She maintained this bill was consistent with the message that AIA tried to deliver to the legislature every session, which was affordability of one's insurance. She said it was important that companies were able to use all the information available to them, information that more precisely indicated the cost of any given risk they insured. When they could pinpoint that better, the cost of everyone's insurance came down and ultimately there was more availability to all insureds in all lines. **Ms. Lenmark** said they strongly supported **HB 387** and urged the committee to give it a do concur.

Opponents' Testimony: None.

Questions From Committee Members and Responses:

**SEN. MIKE SPRAGUE** asked **Greg Van Horssen** to explain why on Page 4, lines 9 through 11, the focus was changed to "However, an insurer may provide discounts to an insured based on favorable aspects of an insured's claims history that is 3 years old or older" and claims history replaced driving record which had been struck. **SEN. SPRAGUE** said there was quite a difference between a claims history and a driving record, so the focus had shifted totally. **Mr. Van Horssen** said State Farm had always operated the good driver discount, the accident-free discount, based upon a claims history. He believed it was consistent with the current wording of the statute which stated nothing adverse could be used in a driving record, but it was okay to use positive things in a claims history. He stated if you put driving records into both of those there would be an inherent conflict and that was part of the problem **HB 387** was meant to address. **Mr. Van Horssen** stated if "driving history" was in this particular provision, then it would be difficult to state they were using the positive aspects of a driving record and at the same time state nothing negative was being done with respect to that driving history.

**SEN. SPRAGUE** questioned **Mr. Van Horssen** about claims such as replacement of a windshield and a parking lot damage; would those be claims history. **Mr. Van Horssen** answered that with respect to State Farm's operation, the good driver discount was based upon the claims history and not the driving record. He said it was based upon the claims history of 3 years or more of a good claims history, and 6 years or more of a good claims history. **SEN. SPRAGUE** again asked if that would be considered a claims history and that he wouldn't qualify because he had his windshield replaced. **Mr. Van Horssen** stated he didn't believe so. He thought they were talking about accidents caused by the driver.

**SEN. STEVE BENEDICT** asked **Mr. Van Horssen** to differentiate between the broken windshield, which wasn't a driving accident, but it still was a claim. **Mr. Van Horssen** stated "yes" that could be viewed as a claim. **SEN. BENEDICT** gave an example of 5 or 6 infractions on his driving record in the last 15 years for failure to drive in a careful and prudent manner, speeding, etc., but he had a clean claims history, never having had an accident for the last 15 years. He would get the discount, because it was based on the claims history rather than his driving record. **Mr. Van Horssen** said to the extent that those driving record problems were older than 3 years, they could not be used in any way to adversely impact the premiums. **SEN. BENEDICT** asked him if the driving record influenced any discounts in the last 3 years and **Mr. Van Horssen** said as the law read currently, it was possible for an insurer to set the rate based upon adverse information in the driving record that was 3 years old or younger.

**SEN. SPRAGUE** said they were implying one thing, but in reality they were doing something else. If a person had never had a ticket, never had an accident, but through no fault the car was vandalized, windows broken and the stereo robbed, based on what he read in **HB 387**, it could be construed that person had a claim history and yet had an excellent driving record. **SEN. SPRAGUE** didn't think that was a positive message. He stated people were encouraged to have good driving records; however, through no fault of their own, they had claims. **REP. BOHARSKI** stated this bill was regarding discounts. The point of a claim made, through no fault of that person, may disqualify that person for a discount.

**SEN. SPRAGUE** asked **Mr. Van Horssen** if he thought that sent a positive message to the very people they were trying to send the positive message. **SEN. SPRAGUE** thought the wording was of better intent with "driving record". **Mr. Van Horssen** clarified "claims history" meant "at fault accidents", caused accidents. He stated it was prudent for them and beneficial to their policy holder to receive an incentive in the form of a premium discount with a claims history that reflected no at-fault accidents.

**SEN. SPRAGUE** asked why that was changed and **Mr. Van Horssen** stated it was changed at the request of the insurance department. He said after the bill was heard the first time, the insurance department went to State Farm and suggested they wanted to see that language changed from "driving record" to "claims history".

**SEN. TERRY KLAMPE** asked **Mr. Van Horssen** if other companies were defining claims history as caused problems. **Mr. Van Horssen** said he was not aware of other companies practices and referred that question to **Frank Cote, Deputy Insurance Commissioner, State Auditor's Office,** who said other companies may not give the discount based upon the broken windshield claims, whether it was the driver's fault or not. He maintained that would be part of the claims made.

**SEN. BILL WILSON** asked **Mr. Cote** to clarify the case of a fender-bender on a slick street with no tickets issued to either driver, would the claim be used against the driver for purposes of future discounts. **Mr. Cote** stated for the purposes of those discounts, even though claims record instead of driving record was used, this law allowed the insurance company to withhold the discount.

Closing by Sponsor:

**REP. BOHARSKI** in closing stated he had introduced the bill but he didn't necessarily agree with the 3 years personally. He thought the insurance company ought to be able to check back further than the 3 years. He maintained it was not the policy of the State of Montana; however, he thought since he was a good driver over an extended period of time, the discount would be appropriate based on that record. He said based on the questions **SEN. SPRAGUE** and **SEN. BENEDICT** brought up, go back to the driving record language, stay with claims history, or perhaps go to a combination of both.

## EXECUTIVE ACTION ON HB 372

Motion/Vote: **SEN. STEVE BENEDICT MOVED HB 372 BE CONCURRED IN.** The motion **CARRIED UNANIMOUSLY** on voice vote.

## HEARING ON HB 488

Opening Statement by Sponsor:

**REP. CARLEY TUSS, HD 46, Great Falls,** presented **HB 488** which addressed the problem of insurance coverage denial, both for auto liability and home owners insurance based on their credit history. In talking with those people that this happened to, most were quite embarrassed. She stated some cited a single adverse episode in their credit history and some, of course, had more lingering problems. Initially, auto liability insurance denial had come to her attention. Upon further investigation and after receiving a letter from the President of Intermountain Mortgage Company, Inc., in Billings, copies of which were given to the committee members, **EXHIBIT #1**, cited three people who had applied for federally guaranteed loans for neighborhood housing who were initially promised insurance and then were cancelled. She alleged in two of those instances, the insurance was cancelled after the deal was consummated. She conveyed their history had been sufficient to get the loan, but because the insurance companies checked over the whole credit history time interval and made judgements, that insurance was denied.

**REP. TUSS** stated, in working with the Insurance Commissioner's Office, they realized sometimes credit issues were problematic. People sometimes didn't have explanations on their credit history and then checked with the insurance company after denial of the

in making a telephone solicitation. However the TCPA preempts state law where it conflicted with the technical procedures requirements."

Closing by Sponsor:

**SEN. WILSON** reiterated that telemarketing fraud was a widespread problem which needed to be addressed. He was willing to work with the committee on any of the amendments. If Section 5 was not left intact, the bill was useless.

## EXECUTIVE ACTION ON HB 387

Motion: **SEN. STEVE BENEDICT MOVED HB 387 BE CONCURRED IN.**

Discussion: **SEN. SPRAGUE** stated the sponsor was adamant that the claims history would be more important than the driving record.

**SEN. EMERSON** stated that driving habits show up in claims history.

**SEN. WILLIAM CRISMORE** stated they were discussing two entirely different things. He stated even vandalism would cause a new rate. He explained your rate was determined on your cost to the insurance company.

**SEN. BENEDICT** felt this was a good bill. He conveyed insurance companies needed to rate on claims experience.

**SEN. SPRAGUE** commented they were dealing with a three year increment. He maintained if your driving record was good for three years, you had a rate discount. He explained by changing this from driving record and to claims history, the insurance company had an advantage.

**Ron Asherbrenner, State Farm Insurance,** commented that this bill was brought about due to a situation which existed between State Farm and the Commissioner's Office. He stated there was a mutual concern about the language which existed. He declared presently, State Farm insured one-third of the drivers in Montana. He said eighty thousand insureds received the good driver discount without this legislation. He stated the danger was that someone could interpret the language as it applied to motor vehicle records as having been used to determine good driver discounts, and that was not true. **Mr. Asherbrenner** stated they based this on claim activity. He declared a person with a DUI could get good driver discounts. He said payments would trigger removing good driver discounts. He maintained good driver discounts did not have anything to do with citations. They rewarded people for the lack of claims where there was liability. He commented in the case of hitting an elk, that would be a judgment call.

**SEN. SPRAGUE** stated if driving records were not used as a basis for good driver discounts, why would the company ask that the person who received a ticket be taken off of the policy to keep a good driver discount in place. **Mr. Asherbrenner** stated this involved two totally separate issues. He reported citations could change the rating factor. He said sometimes it was better to place youthful drivers on their own car so their rate would not impact the family vehicles which they did not drive.

**SEN. FORRESTER** stated it was his understanding that the bill simply corrected a flaw in the present law and allowed the insurers to give good driver discounts.

Vote: The motion **CARRIED UNANIMOUSLY** on oral vote.

## EXECUTIVE ACTION ON HB 488

Motion: **SEN. BENEDICT MOVED TO AMEND HB 488.**

Discussion: **SEN. BENEDICT** commented the amendments, **EXHIBIT #17**, were requested by Larry Akey on behalf of the National Association of Independent Insurers. He conceptually made a further amendment to amendment 4. He would strike the number "10" and insert "30".

**Bart Campbell** commented that **REP. TUSS** agreed to the amendments.

**SEN. SPRAGUE** asked if the amendments would correct the problem of not being renewed because of a bad credit rating. He stated if the person was paying the premium, was this relevant?

**SEN. BENEDICT** stated that would not be covered by the amendments.

**SEN. MILLER** questioned amendment 2. He maintained before the amendment, the company needed to give the reason for declining. He asked to have amendment 2 segregated.

**SEN. BENEDICT** stated this entire section was credit history. He said any consumer could ask to see his credit report.

**SEN. MILLER** stated this dealt with the insured being denied coverage. He contended if they knew the reason they were denied, they could request the credit report.

Substitute Motion: **CHAIRMAN JOHN HERTEL MOVED AMENDMENTS 1, 3, 4, AND 5.**

Vote: The motion **CARRIED** on oral vote with **SEN. WILSON** voting "NO".

Motion: **SEN. BENEDICT MOVED TO ADOPT AMENDMENT 2.**

# SENATE STANDING COMMITTEE REPORT


March 17, 1995

MR. PRESIDENT:

We, your committee on Business and Industry having had under consideration HB 387 (third reading copy -- blue), respectfully report that HB 387 be concurred in.

Signed: John Hertel
Senator John R. Hertel, Chair

Amd. Coord.
Sec. of Senate

Sen. Terry Klampe
Senator Carrying Bill

621154SC.SRF

**Vote: Motion to adopt the amendments of SB 125 carried 18-0.**

**Motion/Vote: REP. ELLIS MOVED SB 125 BE CONCURRED IN AS AMENDED. Motion carried 18-0 with REP. FELAND carrying the bill on the floor.**

## EXECUTIVE ACTION ON HB 342

**Motion: REP. PAVLOVICH MOVED HB 342 DO PASS.**

**Vote: Motion carried 18-0 on HB 342.**

## EXECUTIVE ACTION ON HB 272

**Motion: REP. COCCHIARELLA MOVED HB 272 DO PASS. REP. COCCHIARELLA MOVED THE AMENDMENTS.**

Discussion:

**REP. COCCHIARELLA** explained the amendments.

**REP. MILLS** said it was a shame this issue must come to the legislature to require a business to do what they should do on their own.

**Vote: Motion carried to adopt the amendments on HB 272. Motion carried 18-0.**

**Motion/Vote: REP. COCCHIARELLA MOVED DO PASS AS AMENDED. Motion carried 18-0.**

## EXECUTIVE ACTION ON HB 344

**Motion: REP. PAVLOVICH MOVED TO TABLE HB 344.**

**Vote: Motion carried 18-0.**

**CHAIRMAN SIMON** requested a recess at 9:20 AM. Committee reconvened at 10:00 AM.

## HEARING ON HB 387

Opening Statement by Sponsor:

**REP. WILLIAM BOHARSKI, HD 79, Flathead County** stated this bill was an act clarifying that an insurer may give premium discounts to an insured based upon favorable aspects of the insured's driving record.

Proponents' Testimony:

**Greg VanHorssen, State Farm Insurance,** said they support this bill. They have offered an accident free discount for many years. That discount ranges between 10%-15%.

**Gary Spaeth, Chief Counsel, State Auditor,** supplied **EXHIBIT 2.**

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

**REP. PAVLOVICH** asked whether State Farm considers smoking and speeding fines. **Mr. VanHorssen** said these were claims made as per accidents caused by the insured.

**REP. LARSON** asked if this included hitting a wild game animal. **Mr. VanHorssen** said he was not in a position to answer that question. **Ron Asherbrenner, State Farm Insurance** said any payment made under liability coverage or any payment under the collision coverage for a single vehicle loss that exceeds $400 is considered. Hitting a deer is a comprehensive loss and not fault.

**REP. EWER** said there is a difference between what should be proposed because Mr. Spaeth said the state could maintain driving record history for more than three years, and the language in the bill would strike out driving record. **Mr. Spaeth** said this would occur in the proposed amendment. It would not affect the other. He said he would have no problem with what Rep. Ewer was proposing.

**CHAIRMAN SIMON** asked whether, if he had received a speeding ticket when he was 18 years old, the speeding ticket would be considered a favorable aspect of his driving record. Only favorable things in a driving record could be reviewed. **Mr. Spaeth** said that if there were something unfavorable in a driving record, if there was a speeding ticket, it would be an unfavorable account. **CHAIRMAN SIMON** said it seems that insurance companies can only look back three years, but this bill seems to intend that, if you have had a good history over the last 20 years of no claims, no problems, the insurance company wants to reward that person.? He asked if the insurance companies are not going to look at the bad things because they are limited to three years but there are good thing for 20 years, they want to reward the driver. **Mr. Spaeth** said that was not the intention of the bill.

**CHAIRMAN SIMON** said that, as he reads this bill and the terms driving record or claims history, it appears the only considerations more than three years old would be favorable. Things which are not favorable would not be considered after

three years. For the record, he asked for clarification about the interpretation of this statute based on the language "based upon favorable aspects of a person's driving record or claims history." He asked whether the insurance company would be limited to favorable considerations more than three years old and would be excluded from looking for things which were negative. **Mr. VanHorssen** replied that is how he reads this bill. He added that it is important that this bill addresses discounts and an insurer's ability to reward an individual for a favorable history; that is precisely what the language, as proposed, would do.

**CHAIRMAN SIMON** then stated that the only negative aspects that an insurance company would be able to look at would be those negative aspects in a person's driving history and driving record which are three years old or less. **Mr. VanHorssen** said in the driving record this was the case.

Closing by Sponsor:

The sponsor closed.

EXHIBIT 2
DATE 2-7-95
HB 387

TALKING POINTS FOR HB-409

2/7/95

TO: Rep. Joe Barnett

(INTRODUCTION)

HB-409 IS A CONSUMER BILL....A BILL ABOUT FAIRNESS....AND A BILL ABOUT ECONOMICS.

HB-409 IS ABOUT SERVICES AVAILABLE IN A DETACHED FACILITY OF A BANK. A DETACHED FACILITY, OF COURSE, IS WHAT CUSTOMERS NORMALLY CALL A DRIVE-UP WINDOW FACILITY THAT IS DETACHED FROM THE MAIN BANK OFFICES. CURRENTLY, A DETACHED FACILITY UNDER MONTANA BANKING LAWS IS LIMITED TO RECEIVING DEPOSITS, CASHING CHECKS, RECEIVING PAYMENTS AND OTHER TRANSACTIONS THAT ARE NORMALLY CONDUCTED AT A TELLER WINDOW IN THE MAIN BANKING HOUSE. HB-409 WILL PERMIT DETACHED FACILITIES TO OPERATE WITH FULL SERVICE; THAT IS PROVIDE ANY SERVICE THAT IS NORMALLY OFFERED AT THE MAIN BANK. SUCH FULL SERVICE WOULD INCLUDE SUCH BANKING TRANSACTIONS AS TAKING OUT A LOAN OR OPENING A CHECKING ACCOUNT.

#1 IN MY OPENING, I SAID THIS IS A "CONSUMER" BILL. IT IS. BANKING CUSTOMERS TODAY WANT TO DO BUSINESS IN THEIR LOCAL NEIGHBORHOODS. THEY ARE INCONVENIENCED WHEN THEY HAVE TO TRAVEL A GOOD DISTANCE TO THE MAIN OFFICE OF A BANK TO MERELY OPEN A NEW ACCOUNT, TAKE OUT

EXHIBIT 2
DATE 2-7-95
HB 387

A SIMPLE CREDIT-CARD LOAN FOR $100 OR DISCUSS THEIR PERSONAL FINANCIAL AFFAIRS WITH A BANKING OFFICIAL. THIS IS IRRITATING, TIME CONSUMING AND FRUSTRATING....AND, IT IS PUTTING OUR SMALL-TOWN BANKS AT A DISADVANTAGE WITH THE COMPETITION.

SECONDLY, I SAID THIS WAS A "FAIRNESS" BILL. IT IS. TODAY, SAVINGS AND LOANS AND CREDIT UNIONS HAVE THE ABILITY TO OPERATE A FULL-SERVICE DETACHED FACILITY IN ANY NEIGHBORHOOD IN MONTANA.

AND, FINALLY, I SAID THIS IS AN "ECONOMIC" BILL. IT IS. HB-409 ALLOWS FULL-SERVICE FOR SMALL BANKS, BUT IT DOESN'T MANDATE IT. BANKS IN MONTANA, UNDER HB-409, WILL BE PERMITTED TO OPERATE FULL SERVICE, BUT NO BANK IS GOING TO DO IT UNLESS THE ECONOMICS OF OPERATING FULL SERVICE ARE PROVEN. IF THE NEED IS THERE, OUR SMALL BANKING COMMUNITY WILL BE ABLE TO FILL THAT NEED.

HB-409 IS FLEXIBLE. IT IS FAIR. AND, IT PUTS ALL OUR FINANCIAL INSTITUTIONS IN MONTANA ON AN EVEN PLAYING FIELD.

ONE LAST POINT....HB-409 IS NOT A BRANCH BANKING BILL. ON LINE 4, PAGE 2 THIS BILL SPECIFICALLY PROHIBITS ANY FULL-SERVICE DETACHED FACILITY FROM BEING CONSIDERED A BRANCH BANK. BUT I WILL LET THE BANKING EXPERTS EXPLAIN THIS POINT MORE FULLY.

THANK YOU FOR YOUR ATTENTION, AND I HOPE YOU WILL GIVE HB-409 A "DO PASS" RECOMMENDATION.

I RESERVE THE RIGHT TO CLOSE, MR. CHAIRMAN.

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

Business & Labor DATE 2-7-9

BILL NO. HB 387 SPONSOR(S)

PLEASE PRINT PLEASE PRINT PLEASE P

| NAME AND ADDRESS | REPRESENTING | Support |
|---|---|---|
| Guy Hoffman | ST. Auditor | X |
| Greg Van Horsser | State Farm | X |
| Jacqueline Lenmark | Am. Ins. Assoc | ✓ |
| LARRY AKEY | NATIONAL ASSOC OF INDEPENDENT INSURERS | ✓ |
| R. Ashabraner | State Farm | ✓ |
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PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

disagreed with the answer to the question because the home would increase in value because of the homes around him. **REP. BARNETT** said **Mr. McLean** had represented a number of mobile home park owners and many of whom were here to testify. He then questioned if he had represented any of the mobile home park owners in the Bozeman area. **Mr. McLean** said yes, he represented King Arthur Park.

**REP. BARNETT** said the testimony of **Mr. McLean** and also **Mr. VanHorssen** could be good arguing points for the people who came in as proponents. He said **Mr. VanHorssen** had talked about safety and affordable housing. Consequently, the price of real estate disables these people for not being able to improve their living status. In regard to safety, parks are not maintained if the power bill had become delinquent and lights had been turned off in the park. He asked if people who went into business owe something to the customers. **Mr. VanHorssen** said that was possible. Certainly there are statutory requirements with respect to the maintenance of common areas and the safety of the roads. Those are requirements that these people must meet. This takes the person to the delicate issue of balancing the rights and obligations of the two parties of the two property owners here. The real property owner who owns the underlying property and ultimately is responsible for the health, safety and welfare of the people living in this community. Balancing those rights and obligations of the people who own the personal property parked thereon. There was no testimony regarding the potential liabilities which exist when older trailers are kept in a close living quarter situation such as a mobile home park. There is a sensitive balancing issue going on here which is the position of the people he represents who are business owners, as individuals who have chosen to provide this space; as people who are ultimately responsible for the communities. They should be allowed to make these types of business decisions.

**Closing by Sponsor:**

The sponsor closed.

## EXECUTIVE ACTION ON HB 387

**Motion/Vote: REP. DEVANEY MOVED HB 387 DO PASS. REP. COCCHIARELLA MOVED THE AMENDMENTS. Motion carried to adopt the Cocchiarella amendments 18-0.**

**Motion: REP. COCCHIARELLA MOVED AMENDMENT #2.**

**Discussion:**

**REP. COCCHIARELLA** explained amendment #2.

**REP. LARSON** spoke in favor of the amendment. He explained a situation which had occurred in an accident. Consequently, his

premium had risen substantially. There was no notice of the increase and it took a week of concerted telephone calls.

**REP. COCCHIARELLA** said she had not talked with the Sponsor on this amendment.

**Mr. Ashbrenner** gave a detailed account of the laws which affect this situation regarding the amendment.

**Vote: Motion carried to adopt the #2 Cocchiarella amendment with a vote of 10-8 with REPS. SLITER, ELLIS, OHS, MCKEE, DEVANEY, MARSHALL, BARNETT and SIMON voting no.**

**Motion/Vote: REP. COCCHIARELLA MOVED HB 387 DO PASS AS AMENDED. Motion carried 18-0.**

## HEARING ON HB 426

Opening Statement by Sponsor:

**REP. BOB RANEY, HD 26, Park County** said this bill was written from Oregon statute. He said the idea of the bill was to set up Project Benchmark. Goals were established which were related to the legislature. There were programs established. Under the present system there is no way to determine if programs are working.

**TAPE 2, SIDE B**

Proponents' Testimony:

**REP. JOHN COBB** said benchmarking is a good concept and he supported this bill.

**George Ochenski** said he had worked with **REP. RANEY** since the last session when the bill was being drafted and he supported this bill.

**Melissa Case** said this was a decade of planning. The bill's goals are set and focus on the path of reaching those goals. When more and more people come into the community they understand there is a plan and know how to participate in achieving the goals of the plan. It is stated, it is clear and there is a concise plan. It makes it easier for everyone to operate.

**REP. CARLEY TUSS** said she supported this bill. Private industry is doing this and has benefited. This approach is legislatively driven and the goals are already set.

**Roy Wells** said the benchmark perimeters are a good idea and there will be some governmental services to achieve these goals and he supported this bill.

# HOUSE STANDING COMMITTEE REPORT

February 9, 1995



Mr. Speaker: We, the committee on **Business and Labor** report that **House Bill 387** (first reading copy -- white) **do pass as amended.**

Signed: _____
*Bruce Simon, Chair*

**And, that such amendments read:**

1. Title, line 5.
Following: "THE INSURED'S"
Strike: "DRIVING RECORD"
Insert: "CLAIMS HISTORY"
Following: "RECORD;"
Insert: "REQUIRING THAT RISK CLASSIFICATIONS AND MODIFICATIONS BE COMMUNICATED IN WRITING AT THE TIME OF APPLICATION;"

2. Page 2, line 14.
Following: "insured's"
Strike: "driving record"
Insert: "claims history"

3. Page 2, line 17.
Following: "conditions"
Insert: "and must be communicated to the applicant in writing at the time of application"

4. Page 4, line 8.
Following: "insured's"
Strike: "driving record"
Insert: "claims history"

-END-

2/9
mw

Committee Vote:
Yes 18, No 0.

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Const.Amend. 5; U.S.S.G. § 1B1.1 et seq., 18 U.S.C.A.App.

**5. Criminal Law ⇐1239**

When determining proper increase from base level under Sentencing Guidelines for offense of mail fraud arising out of defendant's attempted sale of his employer's confidential information, district court properly considered intended loss to employer, and was not limited to actual loss. U.S.S.G. § 2F1.1, 18 U.S.C.A.App.

**6. Criminal Law ⇐1239**

Sentencing court acted reasonably when it used biotechnology company's development cost to measure intended loss, for purposes of determining offense level for company's employee convicted of mail fraud; court was not limited to strict market valuation of loss and court was faced with virtually nonexistent open market for financial information and research data that employee offered to sell company's competitor. U.S.S.G. § 2F1.1, 18 U.S.C.A. App.

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Denise Meyer, Deputy Federal Public Defender, Los Angeles, Cal., for defendant-appellant.

Adam B. Schiff, Asst. U.S. Atty., Los Angeles, Cal., for plaintiff-appellee.

Appeal from the United States District Court for the Central District of California.

Before FARRIS, BOOCHEVER and NOONAN, Circuit Judges.

BOOCHEVER, Circuit Judge:

John Stephen Wilson appeals his sentence for mail fraud. He challenges the Sentencing Guidelines, claiming they violate his due process rights by requiring the district court to make findings without considering the reliability of the underlying facts and without requiring that those facts meet any articulated standard of proof.[1] We find that the Guidelines do not violate due process on these grounds. Wilson also challenges his sentence under the Guidelines, claiming that the district court, in applying § 2F1.1, incorrectly computed the value of the loss to the company Wilson attempted to defraud. We disagree and affirm the district court's decision.

## FACTS AND PROCEDURAL HISTORY

Wilson was employed as a research associate with Amgen, Inc., a biotechnology and pharmaceutical firm. As a condition of employment, Wilson agreed to keep the company's research and discoveries confidential. Wilson nevertheless photocopied documents containing Amgen's financial information and research data on its process for producing erythropoietin, a human hormone that stimulates the production of red blood cells. On June 22, 1988, Wilson mailed a letter to Genetics Institute, Amgen's chief competitor, offering to sell these documents for $150,000 or 10,000 shares of Genetics Institute stock. He signed his name as "Pimpernel" and provided a self-addressed envelope with the name "D. Wallace" as the return addressee/sender.

Genetics Institute received Wilson's letter and contacted Amgen, informing Amgen of the existence of the letter and its contents. Amgen, in turn, contacted the FBI, whose agent arranged to meet with Wilson to exchange the documents for $150,000 in cash. Wilson also told the agent he had additional information he was willing to sell for $50,000. On August 11, 1988, Wilson met with the undercover agent and exchanged the documents for what he believed was $200,000 in cash. He was then arrested.

On December 12, 1988, Wilson pled guilty to one count each of mail fraud and use of a fictitious name in a mail fraud scheme in violation of 18 U.S.C. §§ 1341 and 1342 (1982). Wilson was sentenced on April 10, 1989. To calculate Wilson's sentence under Guidelines § 2F1.1, the district

1. Wilson also claims that the Sentencing Guidelines offend due process by restricting the sentencing court's discretion and infringing a defendant's right to an individualized sentence. Our recent decision in *United States v. Brady*, 895 F.2d 538 (9th Cir.1990), however, precludes this claim.